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Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

70-302

CAL. C. FIORINO
petitioner, appellant, plaintiff

v.

NEW ENGLAND SCHOOL OF LAW
A. LEAVITT TAYLOR
JAMES R. DE GIACOMO
A. DAVID MAZZONE
SALVATORE FABIANO
WALTER J. KOZUCH, JR.
respondents, appellees, defendants

PETITION FOR WRIT OF CERTIORARI

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1. ORDERS SOUGHT TO BE REVIEWED BY CERTIORARI.

a. The District Court's fifteen denials entered from October 27 1970 to November 13 1970, of petitioner's fifteen motions in District Court. See addendum "A".

b. The District Court's judgment entered October 27 1970. See addendum "B".

c. The Court of Appeals order entered March 3 1971. See addendum "C".

d. The Court of Appeals order entered March 23 1971. See addendum "D".

2. ORDERS GRANTING EXTENSIONS OF TIME.

The Court of Appeals granted extensions of time within which to petition for certiorari on:

a. March 3 1971, granting April 23 extension.

b. March 1971, granting May 24 extension.

c. MAY 10 1971, JUN 22

3. JURISDICTION OF THIS COURT.

Rule 19 is believed to confer jurisdiction on this Court for review by certiorari because:

a. The Court of Appeals decision conflicts with that of another Court of Appeals on similar matter. See pars. 7b, 8b, 9b herein.

b. The Court of Appeals has decided an important question of Federal law which has not been, but should be settled by this Court. See pars. 7c, 8c, 9e herein.

c. The Court of Appeals decision on a Federal question conflicts with applicable decisions of this Court. See pars. 7d, 8d, 9d herein.

d. The Court of Appeals has so far departed from right judicial practice, or so far sanctioned departure of the District Court from Rules of Court and applicable decisions, as to call for this Court's supervision. See pars. 7 efg, 8 efg, and 9 efg herein.

4. JURISDICTION OF THE DISTRICT COURT.

The jurisdiction of the District Court is based on the following grounds.

a. Diversity of citizenship of the petitioner and the respondents, and the matter in controversy exceeding the sum of $10,000 exclusive of interest and costs.

b. Federal question of due process arising under Amendments V and XIV of the U.S. Constitution.

c. Federal question of equal protection of the laws arising under Amendment XIV of the U.S. Constitution.

d. Antitrust questions arising under Sherman Antitrust Act sections 1,2,7,8.

The basis for the District Court's jurisdiction is stated in pars. 1,2,3,4 of petitioner's Amended Complaint filed in District Court on October 26 1970.

5. TEXTS OF LAWS INVOLVED IN THIS CASE.

a. Amendment V, U.S. Constitution: in part.

"No person shall be...deprived of life, liberty, or property, without due process of law."

b. Amendment XIV, U.S. Constitution: in part:

"No State shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

c. Sherman Antitrust Act (26 Stat.290(1890)): in part:

"Sec.1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. ...

5. TEXTS OF LAWS INVOLVED IN THIS CASE (cont.)

c. Sherman Antitrust Act (continued):

"Sec.2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor ...

"Sec.7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

"Sec.8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

d. District Court D. Mass. Local Rule 12(pt)

"A party opposing a motion may file an opposition to the motion within 10 days after service of the motion...Motions...will be decided on the papers submitted...after the time for filing an opposition has elapsed."

e. Rule 56(c), Fed. Rules Civ. Proc. (part)

"The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

5. TEXTS OF LAWS INVOLVED IN THIS CASE.(cont.)

f. Rule 8(d), Fed. Rules Civ. Proc.

"EFFECT OF FAILURE TO DENY. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided."

g. Rule 8(f), Fed. Rules Civ. Proc.

"CONSTRUCTION OF PLEADINGS. All pleadings shall be so construed as to do substantial justice."

h. Rule 15(a), Fed. Rules Civ. Proc.(part)

"AMENDMENTS. A party may amend his pleading once as a matter of course before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires."

j. Rule 60(b), Fed. Rules Civ. Proc.(part)

"MISTAKES; INADVERTENCE; EXCUSABLE NEGLECT; NEWLY DISCOVERED EVIDENCE; FRAUD, ETC. On motion and upon such terms as are just, the court may relieve a party...from a final judgment, order, or proceeding for the following reasons:(1)mistake, inadvertence, surprise, or excusable neglect;(2)newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);(3)fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of adverse party; (4)the judgment is void...;or (6) any other reason justifying relief...

7. QUESTIONS PRESENTED FOR REVIEW.

The principal question presented here is whether this action, based in some claims on the constitutional due process and equal protection clauses, and in other claims on the Sherman Act §§ 1,2,7, restraint, monopoly, and business or property injury sections, was rightly terminated by summary judgment.

This principal question fairly comprises the following subsidiary questions.

a. Whether the record discloses genuine issues of material fact and claims upon which relief may be granted.

b. Whether the Court of Appeals decision conflicts with that in Dioguardi v. Durning, 139 F.2d 744 (1944).

c. Whether the Court of Appeals has decided an important Federal law question which should be settled by this Court, that is, does a State-licensed law school have the right to arbitrarily dismiss or exclude a law student without a hearing or other due process of law.

d. Whether the Court of Appeals decision conflicts with this Court's decisions in Poller v. CBS, Inc., et al, 368 US 464 (1961), and other applicable opinions.

e. Whether the Court of Appeals has attempted to make factual determinations which should rightly be the province of the trial court jury.

f. Whether the District Court has acted contrary to Rules of Court, including its Local Rule 12, and FRCP Rules 8d, 15a, 56c, and 60b.

g. Whether the District Court decision conflicts with those in Barnard v. Shelburne, 102 NE 1095 (1913); and Connelly v. Univ. Vt. et al, 244 F.Supp.159(1965).

8. STATEMENT OF THE CASE.

Petitioner, Cal. C. Fiorino, attended part-time classes at Portia Law School, now re-named New England School of Law, at night, in 1965-66 and 1967-68. Petitioner passed all courses with grades from 70 to 80 except in 1967-68. Three respondents, part-time teachers James R. DeGiacomo, A. David Mazzone, and Salvatore Fabiano flunked petitioner with grades of 65, 65, and 63 in Equity, Domestic Relations, and Commercial Law courses. The School then sent notice of dismissal from the School dated July 31,1968, Boston, Mass.

Respondent Corporation President, A. Leavitt Taylor, and respondent School Dean Walter J. Kozuch, Jr. denied or ignored petitioner's four written petitions for a readmission hearing. Suffolk Law School evening division rejected petitioner's application for admission after being informby petitioner of his dismissal from New England School of Law. Respondents DeGiacomo, Mazzone, and Fabiano denied petitioner's fifth, sixth, and seventh petitions for readmission. Petitioner sent letters to DeGiacomo, Mazzone, and Fabiano, requesting them to retain in their custody all students examination answer papers in Equity, Domestic Relations, and Commercial Law courses given in 1967-68, pending further proceedings.

Petitioner on July 31, 1970 filed civil complaint in District Court. D. Mass. naming defendants respondents School, Taylor, DeGiacomo, Mazzone, and Fabiano. Petitioner's complaint specified contract, tort; constitutional due process and equal protection of the laws; and Sherman Act §1 restraint, §2 monopoly, and §7 business or property injury claims.

8. STATEMENT OF THE CASE. (continued)

On October 9 1970 respondents filed 2 motions to dismiss alleging complaint's "failure to statea claim upon which relief can be granted"; and a third motion alleging that"there is no genuine issue as to any material fact", and asking for summary judgment. Respondents' motion for summary judgment was supported by affidavits of Kozuch, DeGiacomo, Mazzone, and Fabiano.

On October 26 1970 petitioner filed an amended complaint with a motion to amend the complaint. The amended complaint contains 18 pages of factual statements and 7 pages of claims against Taylor, School, Kozuch, DeGiacomo, Mazzone, and Fabiano.

On October 26 1970 the District Court granted Taylor's motion to dismiss and the School's, DeGiacomo's, Mazzone's, and Fabiano's motion for summary judgment, on the grounds of "failure to state a claim (against Taylor) upon which relief can be granted", and "there is no genuine issue as to any material fact based upon the pleadings and affidavits on file." The District Court judgment was entered on October 27 1970.

On November 5 1970 the District Court filed and denied petitioner's 10 motions to permit motion to amend, to permit opposition to defendants' 3 motions, for relief from summary judgment, to adjudge whether defendant DeGiacomo is in contempt, to produce evidence in custody of defendants School-DeGiacomo-Mazzone-Fabiano, and for relief from taxation of costs. These 10 petitioner's motions were supported by petitioner's 19 page affidavit and the 2 page affidavit of dismissed student Henry Clayman.

On November 1970 the District Court filed and denied petitioner's 2 motions

8. STATEMENT OF THE CASE. (continued)

for findings by the Court, and for new trial.

On November 10 petitioner filed and on November 13 1970 the District Court denied 2 motions to review taxation of costs, and second motion for relief from summary judgment.

On December 9 1970 petitioner filed notice of appeal in District Court and on January 18 1971 filed appellant's brief in the US Court of Appeals for the First Circuit, together with appendix.

On February 8 1971 respondents filed appellees' motion to dismiss appeal and affirm the judgment below, and brief of the appellees and memorandum in support of appellees' motion.

On February 19 1971 petitioner filed appellant's reply brief and memorandum in support of concurrently filed motions to grant petitioner's 15 motions in District Court, and to reverse the District Court judgment and to remand the action for jury trial.

On March 3 1971 the Court of Appeals entered memorandum and order affirming the District Court judgment.

On March 17 petitioner filed petition for rehearing, and on March 23 petitioner filed motion to vacate the Court of Appeals March 3 order.

On March 24 1971 the Court of Appeals denied petitioner's petition for rehearing and motion to vacate.

a(1). TAYLOR'S INTENT AND ACTIONS.

FIRST, respondents Taylor and New England School of Law in 1967 fired former Dean Guy Slade and appointed respondent

8. STATEMENT OF THE CASE. (continued)

Kozuch as Dean with authority to take any steps to obtain speedy accreditation for the School from the American Bar Association, by any means, arbitrary or not.

SECOND, Taylor denied or ignored petitioner's four written petitions for a readmission hearing.

THIRD, Taylor failed to deny, contradict, or file responsive pleadings against petitioner's 15 claims and averments specifically naming and charging Taylor with acting arbitrarily in denying petitioner's 4 petitions for a readmission hearing; denying petitioner due process; denying petitioner equal protection of the laws; breach of contract; torts against petitioner's person and future earnings; conspiracy in restraint of trade; conspiracy to injure petitioner's property rights to study and practice patent law; and conspiracy to create an unfair monopoly. See §§ 5E, 5F, 6C, 10, 11, 11A, 11B, 11C, 13A-G, in petitioner's amended complaint.

a(2). KOZUCH'S INTENT AND ACTIONS.

FIRST, Kozuch authoritatively stated the School Corporation's policy and intent as to the arbitrary means that Kozuch would use to obtain speedy ABA accreditation, as follows,

"The student body has settled down to a year of study. This does not mean that the administration and faculty can now proceed normally...in view of what must be done in such a short time..."

"...in the very important business of planning a future for the school... the students are not only the beneficiaries of what will be done, but they are also the instrumentality by which others,

8. STATEMENT OF THE CASE. (continued)

including the A.B.A., will assess the value of what has been done."

See pages from the School newsletter, The Gavel, September and October 1967, copied in addendum "X" to petitioner's amended complaint, in which Kozuch's above-quoted remarks were published.

SECOND, Kozuch denied or ignored petitioner's four written petitions for a readmission hearing.

THIRD, Kozuch summarily and arbitrarily on the spot denied dismissed student's inquiry how to obtain readmission with the words "There is nothing you can do. Don't waste your time." See Henry Clayman's affidavit filed November 5 1970.

FOURTH, Kozuch's affidavit filed October 9 1970 swears that Kozuch and the School treated petitioner fairly, in good faith, and according to published School regulations as to dismissal and readmission.

FIFTH, petitioner's affidavit p.1 characterizes Kozuch's affidavit statements as "contrary to fact".

SIXTH, Kozuch failed to deny, contradict, oppose, or file responsive pleadings against petitioner's claims and averments specifically naming and charging Kozuch with acting arbitrarily in denying petitioner's 4 petitions for a readmission hearing; arbitrarily denying petitioner due process; denying petitioner equal protection of the laws; breach of contract; torts against petitioner's person and future earnings; conspiracy to injure petitioner's property rights to study and practice patent law; and conspiracy to create an unfair monopoly. See petitioner's amended complaint §§ 5E, 5G, 6C, 9B, 10, 11,

8. STATEMENT OF THE CASE. (Continued)

11A, 11B, 11C, 13A-G.

a(3). DEGIACOMO'S INTENT AND ACTIONS.

FIRST, DeGiacomo stated elements of his intent to arbitrarily flunk and exclude petitioner from the School when DeGiacomo said in Equity class -

"Justice is blind in most situations." (September 21 1967)...

"You try to go as far as you can go in this profession..." (October 19 1967)...

"If you are shrewd enough to exert..." (January 12 1968)...

"Putting one man out of business to benefit another..." (April 18 1968)...

"You can tell that a person is going to flunk when you read his examination." (April 12 1968)...

"It is a mystery to me how some fellows race through the examination - an indication to me of stupidity". (May 16 1968)...

"I am logical." (May 16 1968)...

"I know nothing of Federal practice. I couldn't tell you the difference between a patent and a trademark." (May 1968)...

SECOND, DeGiacomo knew of petitioner's purpose of going to law school to qualify for registration to practice patent law, and of petitioner's background of experience in patent practice in preparation and prosecution of patent applications in U.S. Patent Office and patent offices of other countries.

THIRD, petitioner wrote 2 alternative sets of answers in Equity examination answer book, struck one set of answers, and allowed the second set of answers to stand as the basis for grading.

FOURTH, DeGiacomo arbitrarily and mali-

8. STATEMENT OF THE CASE. (continued)

ciously flunked petitioner in Equity course and unfairly graded petitioner's Equity examination answer paper, which DeGiacomo recognized as petitioner's by means of petitioner's unique large block-printed handwriting on said paper.

FIFTH, DeGiacomo in his affidavit says that DeGiacomo graded petitioner's Equity paper fairly without knowing petitioner's identity;
that DeGiacomo "delivered the examination books to the students including Mr. Fiorino"; and
that "In September 1969, Mr. Fiorino came to my office (having made an appointment) and brought his examination book with him"

SIXTH, petitioner's affidavit states that DeGiacomo's affidavit statements are contrary to fact;
that DeGiacomo never delivered any examination book to petitioner, but, on the contrary, petitioner's Equity examination answer book never left DeGiacomo's custody from the time of the Equity examination in about June 1968 until the present time;
and that petitioner interviewed DeGiacomo at DeGiacomo's office on about November 15 1968, not September 1969, when DeGiacomo produced a stack of Equity examination papers and proceeded to go through the stack, asking for each one "Is this your (1-1018 numbered) paper?"

SEVENTH, petitioner's motion to adjudge whether defendant James DeGiacomo is in contempt of Court, filed November 5 1970, charged that DeGiacomo lied to the Court when DeGiacomo's affidavit swore that DeGiacomo "delivered the examination books to the students including Mr. Florino", and petitioner demanded proof "whether DeGiacomo is responsible for fraud, misrep-

resentation, perjury, or contempt of Court."

EIGHTH, DeGiacomo failed to attach copy of petitioner's Equity examination answer paper to DeGiacomo's affidavit, whereas both respondents Mazzone and Fabiano attached to their respective affidavits, copies of petitioner's Domestic Relations and Commercial Law examination answer papers, respectively.

NINTH, DeGiacomo apparently maliciously destroyed or suppressed petitioner's Equity examination answer paper, evidence of petitioner's diligent and meritorious academic performance in Equity.

TENTH, DeGiacomo failed to deny, contradict, oppose, or file responsive pleadings against petitioner's 15 claims and averments specifically naming and charging DeGiacomo with perjury, fraud, misrepresentation, contempt of Court, suppression and/or destruction of evidence, ethnic discrimination against petitioner, unfairly prejudging petitioner's academic performance, unfairly grading petitioner's Equity paper, tort against petitioner's future earnings, breach of contract, conspiracy to injure petitioner's property rights to study and practice patent law, conspiracy in restraint of trade, and conspiracy to create an unfair monopoly. See petitioner's affidavit and amended complaint §§ 6B, 7D, 11A, 13A-C, and memoranda in support of motions to adjudge whether James DeGiacomo is in contempt of Court, and for relief from summary judgment.

a(4). MAZZONE'S INTENT AND ACTIONS.

FIRST, Mazzone stated elements of his intent to arbitrarily flunk and exclude

8. STATEMENT OF THE CASE. (continued)

petitioner from the School when Mazzone

Admitted that petitioner's Domestic Relations examination answers did substantial justice...(September 1968 interview).

Made marks of apparent approval of 6 of petitioner's 7 Domestic Relations examination answers...(See Mazzone's affidavit).

Admitted doubt as to flunking grade Mazzone gave petitioner when Mazzone told petitioner, "Maybe the trouble with your answers is more a matter of form than content"--- (September 1968 interview). See report of interview with Mazzone in petitioner's affidavit and amended complaint P.11 (276).

SECOND, Mazzone arbitrarily and capriciously flunked petitioner in Domestic Relations course and unfairly graded petitioner's examination answer paper.

THIRD, Mazzone in his affidavit says that Mazzone graded petitioner's Domestic Relations paper fairly without knowing petitioner's identity;
that Mazzone had opportunity to know petitioner's identity before "recording and depositing the students' grades with the registrar; and
that prior to the examination and grading thereof, Mazzone "has never discussed Mr. [illegible] Mr. DeGiacomo, Mr. Fabiano, or anyone else connected with Portia Law School..."

FOURTH, Mazzone never denied, contradicted, opposed, or filed responsive pleadings against petitioner's 15 claims and averments specifically naming and charging Mazzone with ethnic discrimination against petitioner; arbitrarily and capriciously grading petitioner's academic performance; tort against petitioner's

8. STATEMENT OF THE CASE. (continued)

[illegible] breach of contract; con-
[illegible] by to injure petitioner's property
[illegible] to study and practice pursuit [illegible]
[illegible] duty in restraint of trade; conspi-
[illegible] to create and to [illegible] monopoly. See
[illegible] petitioner's original and amended docu-
[illegible] pp. 7, 7a, 9, 9a, 10, 11, 11A, 11B, 11C,
and 13a-G.

c(5). FABIANO'S CONDUCT AND ACTIONS.

[illegible] evidenced attempts of
his intent to unlawfully flunk and expel
petitioner from the School when Fabi-
[illegible]

[illegible] the violence of Fabiano's
[illegible] hostility against petitioner
[illegible] petitioner entered
the office student body as the object of
Fabiano's assault and battery against pe-
titioner's person, Lou Fabiano coughed
[illegible] that of petitioner's notes when peti-
tioner was holding said notes under or
[illegible] petitioner was diligently locating
[illegible] Commercial Code sections which
[illegible] to fight by reciting series of rules
[illegible], in Domestic Relations class in 1968.

Admitted consciousness of his, Fabiano's
guilt for having unlawfully graded petitioner
when Fabiano asked petitioner silence do
[illegible] of his letter against me, at
April 7 1969 interview.

Admitted knowledge petitioner's identity
(after unlawfully reading petitioner's e-
[illegible] per) when Fabiano stated in his
[illegible] regarded each examination with-
out regard to the [illegible] of the writer
and without regard to my feelings, if any,
towards him."

Fabiano arbitrarily flunked pe-
titioner in commercial law course and un-
fairly graded petitioner's Commercial Law

C. STATEMENT OF THE CASE. (continued)

examination answer paper.

THIRD, Fabiano in his affidavit says that Fabiano "never threatened Mr. Florino, physically or otherwise..."; that Fabiano graded each answer in petitioner's examination answer paper "independently and solely on the basis of my best judgment of the quality of that answer..."; and that "until the commencement of this action by Mr. Florino, I had never discussed Mr. Florino with Mr. DeSimone, Mr. Shannon...except to inform the dean of the fact of my meeting with Mr. Florino..."

FOURTH, Fabiano never denied, contradicted, opposed, or filed responsive pleadings against petitioner's 15 causes of action specifically naming and charging Fabiano with assault and battery; ethnic discrimination; unfairly prejudging petitioner's academic performance; illegally and maliciously grading petitioner's academic performance; torts against petitioner's future earnings; breach of contract; conspiracy to injure petitioner's property rights to study and practice patent law; conspiracy in restraint of trade; and conspiracy to create an unfair monopoly. See petitioner's affidavit and attached Complaint ¶¶ 6b, 6c, 9E, 11, 11A, 11B; 11C, 15-16.

D. CONFLICT WITH ANOTHER APPEALS COURT.

FIRST, the Court of Appeals for the Second Circuit held in Bloomardi v. Interstate, 139 F.2d 774 (1944), that "however inexplicitly they may be stated, the plaintiff (Bloomardi) has disclosed his claims" against the defendant (Burling); and "Under the new rules of civil procedure, there is no pleading requirement of stating facts sufficient to consti-

8. STATEMENT OF THE CASE. (Continued)

tute a cause of action', but only that there be 'a short and plain statement of the claim showing that the pleader is entitled to relief', Federal Rules of Civil Procedure, rule 8(a)." The 2d Circuit Court of Appeals accordingly reversed the District Court's judgment on the grounds of the District Court's error in granting motion for dismissal under Rule 12(b).

SECOND, petitioner's amended complaint contains some 15 claims against respondent A. Leavitt Taylor, specifically naming and charging Taylor, and showing that petitioner is entitled to relief as against respondent Taylor. See §§ 8a(1) herein.

THIRD, the Court of Appeals for the First Circuit in this action, in face of the fact that petitioner's amended complaint contains some 15 claims against respondent Taylor, nevertheless affirmed the District Court judgment, entered October 27 1970, which granted Taylor's motion "to dismiss the complaint against him for failure to state a claim upon which relief can be granted, even though petitioner's amended complaint with its 15 claims against Taylor was in the possession of the District Court by noon of October 26 1970.

c. DECISION ON IMPORTANT QUESTION.

FIRST, This Court, The Supreme Court of the United States, has not settled, but should settle, the important question of Federal law -

Whether a State-licensed law school, such as respondent New England School of Law, which enjoys exemption from Federal income taxes, and is therefore subsidized in part by the Federal Government, has the right to arbitrarily dismiss a student without a hearing or other due process of

8. STATEMENT OF THE CASE. (continued)

law guaranteed to all persons by the United States Constitution Amendments V and XIV.

SECOND, the facts as to respondents Taylor's and Kozuch's intents and actions, set forth in §§ 8a(1) and 8a(2) herein, tend to prove that respondents School, Taylor, and Kozuch arbitrarily dismissed petitioner from the School, without a readmission hearing, which petitioner requested in four successive written petitions, each of which was denied or ignored.

THIRD, the decision of the Court of Appeals in this case is to the effect that the Court of Appeals lends its authority to the proposition that respondent School, a law school subsidized in part by exemptions from Federal income taxes, has the right to arbitrarily dismiss a student and thereby deprive him of life or the means to earn a livelihood, and property rights to study and practice Federal patent law, without any hearing or other due process of law hitherto guaranteed to all persons by the United States Constitution Amendments V and XIV.

d. CONFLICT WITH THIS COURT'S DECISIONS.

FIRST, This Court has in Poller v. CBS, Inc., et al, 368 US 464 (1962), held that, on the record, it cannot be said that "there is no genuine issue as to any material fact", within the meaning of Federal Rule of Civil Procedure 56(c), and the motion for summary judgment should not have been granted. Pp. 465-74.

SECOND, the record in this case shows that petitioner has denied and characterized as "contrary to fact" every material affidavit statement of fact made by respondents; and respondents have never denied

8. STATEMENT OF THE CASE. (continued)
a single material fact in petitioner's 19 page affidavit or Henry Clayman's 2 page affidavit. See summary of the material facts as to the intents and actions of each of the respondents in §§ 8a(1), 8a(2), 8a(3), 8a(4), and 8a(5) herein.

That is, (1) respondent Taylor has never denied that he authorized respondent Kozuch to arbitrarily dismiss petitioner without a hearing or other due process of law; (2) respondent Kozuch has never denied that he arbitrarily denied Clayman's spoken petition for readmission, and 4 times denied petitioner's 4 written petitions for readmission; (3) respondent DeGiacomo has never denied petitioner's claims that De Giacomo committed perjury and fraud upon the District Court when DeGiacomo falsely swore in his affidavit that DeGiacomo delivered petitioner's Equity paper to petitioner before November 15 1968 interview; (4) respondent Mazzone has never denied or explained why Mazzone gave petitioner a flunking grade in face of the undenied facts that Mazzone admitted the justice of petitioner's examination answers, and Mazzone's own handmade markings on the answer paper indicate approval of 84 % of petitioner's answers; and (5) respondent Fabiano has never denied Fabiano's violent personal physical assault and battery against petitioner's person, nor Fabiano's admission of guilt for unfairly grading petitioner's academic performance when Fabiano said "Please do not throw up this matter against me."

THIRD, the Court of Appeals in this action, in the face of the record, nevertheless affirmed the District Court judgment that "there is no genuine issue as to any material fact based upon the pleadings and affidavits on file", in spite of the

8. STATEMENT OF THE CASE. (continued)

fact that petitioner's amended complaint with its 7 pages of claims naming each respondent at least 15 times each, and 18 pages of fact statements summarized in §§ 8a(1-5) herein was in the possession of the District Court at least a full day before entry of judgment on October 27 1970.

e. COURT OF APPEALS SAT AS TRIAL JURY.

The Court of Appeals has departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. That is, the Court of Appeals has in this action in effect sat as a trial jury, infringed on the proper province of the District Court trial jury, to make determinations of fact, instead of confining itself to reviewing matters of law.

FIRST, the Court of Appeals erroneously stated in its March 3 order that defendants' affidavits were contradicted; whereas p. 1 of petitioner's affidavit filed November 5 1970 expressly "fully and positively contradict the Affidavits of Defendants" De Giacomo, Mazzone, and Kozuch; and petitioner's second affidavit filed February 19 1971 contradicts Fabiano's affidavit (which petitioner did not recieve until February 10 1971.)

SECOND, the Court of Appeals erroneously states in its March 3 order that petitioner "appeals from a summary judgment." The petitioner appealed in fact not only from the summary judgment, but also from the District Court's granting of 2 of defendants motions, and also from the District Court's denials of petitioner's 15 motions in District Court.

THIRD, The Court of Appeals erroneously states that "plaintiff has failed to offer

8. STATEMENT OF THE CASE. (continued)

sufficient evidence in response to the categorical denials contained in defendants affidavits", in face of the record which shows that petitioner's and Henry Clayman's affidavits, amounting to 21 pages of sworn material facts, provides uncontradicted evidential proof of Taylor's responsibility for Kozuch's arbitrary actions, Kozuch's arbitrary denial of due process, Kozuch's arbitrary instant denial of student's spoken petition for readmission, DeGiacomo's perjury, Mazzone's arbitrary and capricious grading of petitioner's academic performance, Fabiano's violent physically demonstrated hostility against petitioner, and DeGiacomo's suppression or destruction of evidence after petitioner requested DeGiacomo to retain said evidence in DeGiacomo's custody "pending further proceedings."

FOURTH, the Court of Appeals went outside of its province to make factual determinations such as-

"Nor do we think it reasonable to infer bias from the statement of one of plaintiff's teachers...nor malice from the fact that a second teacher may have lost his temper... nor bad faith from the statement of a third teacher". See §§ 8a(1...5) herein for a summary of the material facts from which the Court of Appeals has come to the astonishing conclusions as to the facts here quoted from the March 24 order.

FIFTH, the Court of Appeals assay into the province of the trial jury, especially in the March 24 memorandum and order, has referred only to a few of the large array of the facts set forth in petitioners and Clayman's affidavits, the facts in petitioner's affidavit Pp. 1-18 being

8. STATEMENT OF THE CASE. (continued)

exact verbatim photocopied pages taken from petitioner's amended complaint filed at noon, October 26 1970. The Court of Appeals neglected to draw any conclusion of fact from the sworn evidence that respondent Kozuch arbitrarily instantly denied student's spoken petition for readmission (p.1, Clayman's affidavit). The Court of Appeals neglected to draw any conclusion of fact from the published evidence as to respondent Kozuch's arbitrary suspension of normal readmission proceedings "This does not mean that the administration and faculty can now proceed normally..."(§ 8a(2) herein). The Court of Appeals neglected to draw any conclusion of fact from respondent DeGiacomo's apparent suppression or destruction of evidence.

f. DISTRICT COURT'S PROCEDURAL ERRORS.

The Court of Appeals has in this action so far sanctioned the District Court's procedural errors as to call for this Court's supervision. That is,

FIRST, the District Court with judicial haste denied 13 of petitioner's motions on the same day of filing thereof, and denied 2 of petitioner's motions within 3 days after filing thereof, contrary to District Court Local Rule 12 which prescribes that no decision on any motion shall be made until after 10 days after filing thereof.

SECOND, the District Court illegally granted respondent Taylor's FRCP Rule 12 (b)(6) motion to dismiss the complaint against him "for failure to state a claim" against Taylor, in face of the record which shows that petitioner's amended complaint containing some 15 claims against Taylor was filed on October 26 1971, one full day before granting of Taylor's motione was entered on October 27 1970.

8. STATEMENT OF THE CASE. (continued)

THIRD, the District Court erred in denying petitioner's two FRCP Rule 60b motions for relief from summary judgment; in face of the record which shows competent material facts tending to prove DeGiacomo's perjury as to his continuing custody of and apparent suppression or destruction of the evidence of petitioner's Equity answer paper; and Clayman's new hearsay evidence of Fabiano's bias against Italian-American students and anti-semitism against Jewish students. For the same reasons, the District Court erred in denying petitioner's 4 motions to produce evidence in respondents' custody, necessary for final proof or disproof of DeGiacomo's perjury and suppression of evidence, and Fabiano's bias and anti-semitism.

FOURTH, the District Court erred in denying petitioner's October 26 1970 filed motion to amend the complaint, and petitioner's November 5 1970 filed motion to permit motion to amend the complaint; which two denials of petitioner's two motions to amend, are contrary to the express intent of FRCP Rule 15a, which requires that leave to amend pleadings "shall be freely given when justice so requires".

FIFTH, the District Court erred in granting respondents' motion for summary judgment on grounds that "there is no genuine issue as to any material fact" and entering this granting on October 27 1970; in face of the record which shows that petitioner's amended complaint filed October 26 1970 clearly and specifically defines the due process, equal protection, contract, torts, and Sherman Act issues; supported by 18 pages of material facts tending to prove each respondent's liability on each issue, and reinforced by 7 pages containing 15 claims against each

8. STATEMENT OF THE CASE. (continued)

respondent.

SIXTH, the District Court erred in denying petitioner's 3 oppositions filed October 26 1970 and petitioner's 3 motions to permit opposition to respondents' 3 motions, contrary to FRCP Rule 8f, which requires that all "pleadings shall be so construed as to do substantial justice".

g. DISTRICT COURT'S DEPARTURES.

The District Court's judgment, sanctioned by the Court of Appeals, has so far departed from the accepted and usual course of judicial proceedings initiated by dismissed students, as to call for this Court to exercise its power of supervision over the Federal judiciary. That is,

FIRST, The District Court decision conflicts with that in Connelly v. Univ. Vt. et al, 244 F. Supp. 159 (1965), where the Court denied the University's motions to dismiss and for summary judgment under FRCP Rule 56, on grounds that "there appear to be genuinely disputed issues of fact as to whether the defendant's conduct was arbitrary, capricious or in bad faith". Connelly alleged that the University arbitrarily dismissed him and that an instructor "made up his mind to fail him before he completed the course." Petitioner alleges that not one but five School administrators or teachers arbitrarily denied him readmission or arbitrarily graded his work. See §§ 8a(1-5) herein.

SECOND, the District Court decision conflicts with that in Barnard v. Shelburne, 102 NE 1095 (1913), in which the Court found that the record is "bare of any evidence to show the existence of bad faith on the part of the school committee of Shelburne; and that Barnard had opportunity

8. STATEMENT OF THE CASE. (continued)

to "attend another school adapted to his ability and accomplishments". Unlike the Barnard v. Shelburne case, the record of the present action has 21 pages of evidence, in petitioner's and Henry Clayman's affidavits, tending to prove the bad faith of each of the 6 respondents. Unlike the situation of Barnard, the 6 respondents' arbitrary grading and arbitrary denials of readmission hearing have destroyed petitioner's opportunity to attend another school "adapted to his ability and accomplishments." Petitioner's ability in the law and equity may be indicated by the fact that respondent DeGiacomo apparently consciously took the risk of penalties for perjury and suppression of evidence rather than disclose petitioner's Equity answer paper with its diligent exercise in writing two sets of answers in analysis of equitable matters of conscience, and in choosing which conclusions of conscience would stand unstricken as basis for grading in the Equity examination. Petitioner's accomplishments may be indicated in the 3 letters of reference from patent attorneys included in petitioner's first petition for readmission attached to the petitions to De Giacomo, Mazzone, and Fabiano (see Mazzone's affidavit for copies of said 3 letters). Petitioner's accomplishment or potentials for accomplishment in the practice of law may be further indicated by the facts that the District Court and Court of Appeals both accepted jurisdiction of this action, in spite of the skillful jurisdictional defenses put up by respondents' distinguished Counsel, Murray Falk, Esq., partner and procedural and trial specialist of respondent Mazzone's law firm, the fine respected Boston firm of Moulton, Looney, Mazzone, Falk, and Markham. (Mr. Falk was also on the School's faculty.)

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9. ARGUMENT.

Review on writ of certiorari should be granted for the following special and important reasons, bcdefg.

a. THE RECORD DISCLOSES GENUINE ISSUES OF MATERIAL FACT AS TO THE LIABILITY OF EACH OF THE RESPONDENTS AND SPECIFIC CLAIMS AGAINST EACH OF THE RESPONDENTS UPON WHICH RELIEF MAY BE GRANTED, as will appear hereinafter, in reasons b-c-d-e-f-g.

b. THE COURT OF APPEALS DECISION CONFLICTS WITH THAT IN DIOGUARDI V. DURNING, 139 F.2d 774 (1944), in which the Court of Appeals for the Second Circuit held that "Under the new rules of civil procedure, there is no pleading requirement of stating facts sufficient to constitute a cause of action', but only that there be 'a short and plain statement of the claim showing that the pleader is entitled to relief', Federal Rules of Civil Procedure, rule 8(a)." The 2d Circuit Court of Appeals found that "however inartistically they may be stated, the plaintiff (Dioguardi) has disclosed his claims" against defendant Durning; Dioguardi nevertheless stated claims showing that Dioguardi was entitled to relief. The 2d Court of Appeals accordingly reversed the District Court judgment which had granted defendant Durning's Rule 12b motion for dismissal.

The present case resembles the Dioguardi case in that petitioner Fiorino is also prosecuting this action pro se. Like Dioguardi, petitioner Fiorino filed an original complaint (of 4 pages), and an amended complaint (of 25 pages) which considerably expanded the allegations of the original complaint. Petitioner Fiorino's original complaint does not contain any claim specifically naming respondent

9. ARGUMENT. (continued)

Taylor, but only names Taylor as one of the originally cited 5 defendants New England School of Law (formerly Portia Law School), School President A. Leavitt Taylor, teacher James DeGiacomo, teacher A. David Mazzone, and teacher Salvatore Fabiano. But after defendants served motion for summary judgment, Taylor's motion for dismissal, and the other original 4 defendants' motion for dismissal; petitioner prepared his amended complaint specifically contradicting each of defendants' affidavits, together with 3 oppositions to defendants' 3 motions.

Petitioner's amended complaint contains some 7 pages of claims against all 6 of the respondents, now including School Dean Walter J. Kozuch, Jr. This amended complaint contains some 15 claims specifically naming respondent Taylor, which were in the possession of the District Court at noon, October 26 1970. The Court of Appeals therefore plainly erred in affirming the District Court judgment granting Taylor's motion "to dismiss the complaint against him for failure to state a claim upon which relief can be granted". Petitioner Fiorino certainly did not fail to state claims against Taylor in the amended complaint. See also facts in §8a(1) above.

The Court of Appeals decision in this case clearly conflicts with that of the 2d Circuit Court of Appeals in Dioguardi v. Durning. The Court of Appeals in this action should have ordered denial of Taylor's Rule 12b motion for dismissal, for the reason that petitioner's 15 claims against Taylor set forth in the amended complaint certainly complied with FRCP Rule 8a in showing that petitioner is entitled to relief as against Taylor.

9. ARGUMENT. (continued)

c. THE COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT, whether a State-licensed law school such as respondent New England School of Law, which is subsidized in part by Federal income tax exemptions, has the right to arbitrarily dismiss a student without a hearing demanded by the student, or without other due process of law guaranteed by Amendments V and XIV to the United States Constitution.

Respondents admit on p.1 of memorandum in support of defendants' motion to dismiss "failure of the school to re-admit him (petitioner) without granting him (petitioner Fiorino) a hearing, despite several requests, by the plaintiff (petitioner Fiorino), for hearing."

In petitioner's opinion, the facts as to the intents and actions of respondents Taylor and Kozuch, respectively the chief corporate officer and chief administrator of respondent School, tend to prove that Taylor and/or his agent Kozuch arbitrarily denied petitioner's 4 requests for a re-admission hearing. See the fourth request addressed directly to Taylor in addendum "E", and the facts stated in §§ 8a(1) and 8a(2) herein.

Suffolk University Law School, the competitor of respondent School in operation of an evening law school business in Boston, allows a dismissed or failed student a hearing as a matter of right.

The practice of allowing a dismissed student a hearing is not only the accepted and usual course of proceeding in the law school business. In one of the numerous cases involving medical schools, the state Court remarked in State ex rel.

9. ARGUMENT (continued)

Sherman v. Hyman, 171 SW 2d 822 (1942), "All the authorities agree that students may not be dismissed or suspended or deprived of any right without notice and a fair hearing," and "the right to study medicine and practice medicine is a property right".

However, recent Federal & State decisions, such as those in Connelly v. Univ. Vt. et al, 244 F. Supp. 159, and Mustell v. Rose, 211 So. 2d 489 (1968), also involving dismissed students disputes with medical schools, are to the effect that the dismissed student is not necessarily entitled to a hearing except when "there appear to be genuinely disputed issues as to whether the defendant's conduct was arbitrary, capricious or in bad faith, the plaintiff is entitled to have these issues tried before this Court. 3 Barron & Holtzoff, Federal Practice and Procedure, Sect.123, p. 101-102." (Connelly v. Univ. Vt. et al, vide supra, p.161).

Surely, in the present action, where petitioner's amended complaint contains 7 pages of claims, naming the 6 respondents some 75 times with some 15 claims alleging each respondent's individual or joint liability for arbitrary denial of due process, discrimination, breach of contract, torts, and violations of Sherman Antitrust Act §§ 1 and 2 --- it would be reasonable to conclude that there appear to be genuinely disputed issues as to whether the 6 respondents' conduct was arbitrary, capricious, or in bad faith. See §§ 8a(1-5) herein.

Yet, in spite of the existence of genuinely disputed issues, and in spite of the respondents' admission of denial of due process, and the undenied fact that Kozuch arbitrarily instantly denied Clayman's spo-

9. ARGUMENT (continued)

ken petition for readmission, and the undenied fact that Kozuch published his admission of his arbitrary suspension of normal school procedures, and the undenied fact that DeGiacomo suppressed or destroyed the evidence of petitioner's meritorious Equity answer paper --- in spite of all this, the Court of Appeals calls these facts "conspicuously weak" and affirms the District Court's incomprehensible judgment "that there is no genuine issue as to any material fact."

This Court of Appeals decision amounts to a decision that a State-licensed law school which is subsidized in part by Federal tax exemptions, has the right to arbitrarily exclude a student from the study and practice of law without a hearing or other due process of law hitherto guaranteed to all persons by the Federal Constitution.

The Court of Appeals in the present action has thereby taken a step backward in jurisprudence. All previous State and Federal cases initiated by dismissed students teach that "the right to study...and practise...is a property right" and "students may not be dismissed or suspended or deprived of any right without notice and a fair hearing" (State ex rel. Sherman v. Hyman, 171 SW 2d 822 (1942)); and when "there appear to be genuinely disputed issues as to whether the defendant's conduct was arbitrary, capricious or in bad faith, the plaintiff is entitled to have these issues tried before this Court." (Connelly v. Univ. Vt. et al, 244 F. Supp. 159 (1965)). (See also Barnard v. Shelburne, 102 NE 1095 (1913); Mustell v. Rose, 211 So.2d 489('68))

The important Federal question whether a student of Federal law, preparing for

9. ARGUMENT. (continued)

the practice of Federal patent law, in a State-licensed law school which enjoys Federal income tax exemptions constructively constituting a Federal subsidy, may be arbitrarily excluded from such school and the practice of Federal patent law - can properly be decided only by this Court.

The fundamentally important Federal question which the Court of Appeals has decided with judicial haste, without an opinion, may be restated as follows --

Whether the organizers of a new law school controlled by a new administration to offer instruction on Federal and State laws, may, in the process of organization, act contrary to the spirit and letter of Amendments V and XIV to the Federal Constitution by arbitrarily denying dismissed student requested hearing or other due process of law, and continue to enjoy Federal financial subsidy in the form of exemptions from Federal income taxation.

This fundamentally important Federal question has not been, but should be settled by this Court in order to provide clear guidelines in law for operations of established, reorganized, or new law schools, such as respondent New England School of Law, in so far as such school operations affect the Federal constitutionally guaranteed rights of such schools' students, in so far as such operations involve the providing of educational services for fee payments in the teaching of constitutional and other Federal branches of the law, and in so far as such school operations are financed in part by Federal taxpayers by Federal income tax exemptions granted to said schools.

9. ARGUMENT. (continued)

d. The Court of Appeals Decision Conflicts with This Court's Decisions in Poller v. CBS, Inc., et al, 368 US 464 (1961); First Natl. Bank v. Cities Service Co., 391 US 253 (dissenting opinion); Duncan v. Louisiana, US Repts., vol.391 p. 169; Sartor et al v. Arkansas Natural Gas Corp., 321 US 620.

This Court held in Poller v. CBS, vide supra, that on the record of the Poller case, it cannot be said that "there is no genuine issue as to any material fact", within the meaning of Fed'l Rule of Civil Procedure 56c, and the motion for summary judgment against Poller should not have been granted. In This Court's opinion in Poller v. CBS,

> "It may be that upon all of the evidence a jury would be with the respondents. But we cannot say on this record that 'it is quite clear what the truth is.'...We look at the record on summary judgment in the light most favorable to Poller, the party opposing the motion, and conclude here that it should not have been granted. We believe that summary procedures should be used sparingly in complex antitrust litigation where motive and intent play leading roles, the proof is largely in the hands of the alleged conspirators, and hostile witnesses thicken the plot. It is only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given to their testimony can be appraised. Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of even handed justice.'"

Petitioner has produced evidence in the form of petitioner's and Henry Clayman's affidavits. This evidence tends to show that respondents Taylor and Kozuch denied or ignored petitioner's four written requests for a readmission hearing, that Kozuch instantly on the spot denied student's (Clayman's) spoken petition for readmission; that Kozuch ad-

9. ARGUMENT. (continued)

mitted that during the successful drive for ABA accreditation the administration and faculty could not "now proceed normally", that Fabiano violently assaulted petitioner, that Mazzone flunked petitioner while Mazzone admitted that petitioner's Domestic Relations examination answers did substantial justice and Mazzone's markings on petitioner's answer paper indicate Mazzone's approval of 84% of petitioner's answers, and DeGiacomo had custody of petitioner's Equity answer paper on November 15 1968 while DeGiacomo's affidavit swears that DeGiacomo "delivered the examination books to the students including Mr. Fiorino" on or before Sept. 1968.

Clayman's affidavit (see addendum J herein, and original filed on November 5 1970) also tends to show that Fabiano, by hearsay evidence was accustomed to arbitrarily flunk Italian and Jewish students, en masse, at different times.

It must be emphasized that petitioner's and Clayman's affidavits were filed on November 5 1970, eight days after judgment for the respondents was entered on October 27 1970. But it must also be emphasized that petitioner's 19 page affidavit has its last 18 pages photocopied from petitioner's 25 page amended complaint which was filed on October 26 1970, one full day before entry of judgment.

The District Court therefore had in its possession substantially all of the facts as to respondents' Taylor's, Kozuch's, DeGiacomo's, Mazzone's, and Fabiano's intents and actions set forth in pars. 8a(1-5) herein, one full day before entry of judgment for the respondents (see the docket and judgment in addenda A and B herein).

The District Court also had in its possession one full day before entry of judgment petitioner's amended complaint with its 7 pages of claims naming each respondent some 15 times each on charges of individual liability for arbitrary denial of due process, ethnic discrimination, breach of contract, and torts; as well as alter-

9. ARGUMENT. (continued)

native claims naming each respondent on charges of joint liability for violations of Sherman Antitrust Act sections against restraint of trade, monopoly, and injury to petitioner's property rights to study and practice patent law.

Petitioner's claims against respondents state the elements of two alternative theories of the case.

Petitioner's first theory is that of the individual liability of each of the respondents. This first theory does not require any reasons to explain why the respondents did what they did to injure petitioner. This first theory only requires proof either that petitioner was arbitrarily denied readmission by the School and/or Taylor and/or Kozuch, or that petitioner was arbitrarily flunked by DeGiacomo and/or Mazzone and/or Fabiano.

Respondents have already admitted (on p.1 of memorandum in support of defendants' motion to dismiss) respondents' denial of due process by "failure of the school to re-admit him (petitioner) without granting him a hearing, despite several requests, by the plaintiff, for hearing." (See addendum E for petitioner's fourth request for a hearing).

Respondents have never denied any of the statements in petitioner's or Clayman's affidavits, nor in petitioner's amended complaint. Therefore by FRCP Rule 8d (p.4 herein), respondents' failure to deny must be deemed as admission of Clayman's statement that Kozuch said "There is nothing you can do. Don't waste your time" in seeking to gain re-admission by normal readmission procedures. Since Kozuch is the only known member of the readmission committee (see Kozuch's affidavit statement 7), this brusque and harsh verbal denial by Kozuch of Clayman's verbal petition for readmission must be construed as an arbitrary denial of Clayman's readmission. (See statement 1, addendum J herein).

9. ARGUMENT. (continued)

But although it is clear beyond a reasonable doubt that Kozuch arbitrarily denied Clayman's rights to due process, there is no direct evidence that Taylor and/or Kozuch and/or the School arbitrarily denied Fiorino's rights to due process, although respondents have admitted denying Fiorino's rights to due process.

There is, however, indirect evidence that Taylor and/or Kozuch and/or the School may have formed an intent to arbitrarily deny students due process in Kozuch's published statements (see addendum F herein) admitting that the school administration and faculty were not proceeding normally during the successful drive for ABA accreditation in 1967-68, and that the student body was being used as an "instrumentality by which" the warmly coveted ABA accreditation could be obtained. Upon all of the evidence a jury maywell find that Taylor and/or Kozuch and/or the School did not arbitrarily use the student body to obtain ABA accreditation in the surprisingly short time of less than one year after sixty (60) years of non-accreditation.

But the fact that Kozuch arbitrarily denied at least one student, Henry Clayman, a dismissed students normal rights to use of normal readmission procedures, lends credence to Fiorino's extremely vigorous 7 pages of claims in his amended complaint, alleging that he, Fiorino, was arbitrarily denied due process when respondents admittedly denied Fiorino's four written requests for a readmissiom hearing.

Petitioner's first theory, the individual liability theory, applies also to respondents DeGiacomo, Mazzone, and Fabiano. For petitioner's primary allegations against these three part-time teachers in the School's evening division, are that each teacher arbitrarily graded petitioner's academic performance. This individual liability theory does not require any proof that these teachers acted jointly or in conspiracy. This first theory only requires proof that any one of the

three part-time teachers arbitrarily flunked Fiorino.

The evidence of record that DeGiacomo is the only one of these three teachers to fail to produce Fiorino's examination answer paper as an attachment to (DeGiacomo's) affidavits filed October 9 1970, must be compared with both Mazzone's and Fabiano' disclosures of their custodies of Fiorino's Domestic Relations and Commercial Law examination answer papers, respectively attached to Mazzone's and Fabiano's affidavits.

Petitioner's motion to adjudge whether DeGiacomo is in contempt, filed November 5 1970, suggests that DeGiacomo suppressed or destroyed Fiorino's Equity examination answer paper to destroy evidence that DeGiacomo's arbitrarily and unfairly graded Fiorino's academic performance in Equity. A jury may well find that DeGiacomo did not arbitrarily grade Fiorino. But the fact that Fiorino took the precaution of requesting DeGiacomo to maintain custody of Fiorino's Equity paper, by certified mail (see addendum G), certainly puts the burden of proof of custody on DeGiacomo, in view of the facts that Mazzone and Fabiano proved their custodies of Fiorino's examination answer papers. DeGiacomo should be given the opportunity to answer the serious charges of perjury, fraud, and suppression of evidence, involved in the fact question of the custody of the missing Equity paper. The facts that DeGiacomo evaded interview with Fiorino for some ten (10) weeks, and that DeGiacomo said "You can tell that a person is going to flunk when you read his examination" (pp. 7,9, amended complaint and affidavit of Cal. C. Fiorino), lend credence to petitioner's claims that DeGiacomo arbitrarily and unfairly prejudged and flunked petitioner.

The individual liability theory is petitioner's primary case against respondent Mazzone.

9. ARGUMENT. (continued)

Mazzone arbitrarily and capriciously flunked petitioner in Domestic Relations, in spite of the facts that Mazzone admitted that petitioner's examination answers did substantial justice (see petitioner's amended complaint and affidavit p.11 in both), and Mazzone's own handwritten markings on petitioner's examination answer paper indicate Mazzone's approval of 84% of petitioner's answers (see answer paper attached to Mazzone's affidavit filed October 9 1970). This individual liability theory does not require that petitioner prove that Mazzone acted jointly or in conspiracy with anyone else. This individual liability theory only requires that petitioner's presentation of the facts and claims, and petitioner's cross-examination of all of the respondents convince the jury that any one of the 6 respondents, Mazzone or any of the other 5, arbitrarily denied Fiorino due process, or arbitrarily graded Fiorino's academic performance.

The individual liability theory is also petitioner's primary case against Fabiano. Fabiano arbitrarily and with violent hostility against Fiorino, prejudged and flunked Fiorino in Commercial Law. This individual liability theory is supported by the facts that Fabiano evaded interview with Fiorino for seven (7) months; and when Fiorino finally obtained the requested review of Fiorino's examination answer paper, Fabiano begged: "Please do not throw up this matter against me." (See petitioner's amended complaint and affidavit pp. 12 and 13). The Court of Appeals charitably chooses to consider as innocuous the "fact that a second teacher (Fabiano) may have lost his temper in class one day" (see addendum D herein). Nevertheless, the facts that Fabiano committed assault and battery against Fiorino's person (see petitioner's amended complaint and affidavit p.18 in both), Fabiano's 7-month evasion of interview, and Fabiano's admission of a sense of guilt ("Please do not throw up thismatter against me") lend credibili-

9. ARGUMENT. (continued)
ty to petitioner's allegations that Fabiano arbitrarily prejudged and flunked Fiorino. This individual liability theory does not require that petitioner prove that Fabiano acted jointly or in conspiracy with any one else, but only that petitioner prove that Fabiano, or any one of the 6 respondents arbitrarily denied Fiorino due process or arbitrarily graded Fiorino's work.

Petitioner's second theory is that of the joint liability of at least two (2) or more of the 6 respondents. This joint liability theory does not require proof of conspiracy, but only that petitioner prove that two at least of the 6 respondents acted jointly to arbitrarily deny due process to Fiorino or arbitrarily flunk Fiorino.

Credibility is given this joint liability theoryby the facts that Taylor fired Dean Slade and hired Kozuch as full Dean at the same time that Taylor authorized Kozuch to obtain speedy ABA accreditation by any means, arbitrary or not (see par. 8a(1) herein); and both Taylor and Kozuch denied Fiorino due process by their both denying or ignoring Fiorino's four (4) written requests for a readmission hearing (see par. 8a(2) herein).

Credibility is given this joint liability theory by the facts that all of the three part-time teachers DeGiacomo, Mazzone, and Fabiano gave Fiorino practically the same identical grades (65%, 65%, 63%) in the same academic year 1967-68 when Taylor and Kozuch took the same action in denying Fiorino due process, which respondents have specifically admitted (see p.1 of memorandum in support of defendants' motion to dismiss filed October 7 1970). Further credibility is given the joint liability theory by the facts that all of the three part-time teachers DeGiacomo, Mazzone, and Fabiano who flunked Fiorino are Italian Americans, whereas all of Fiorino's non-Italian teachers gave Fiorino passing grades. This parallellism and simultaneity of action in denying due process and in

the identical numbers used to flunk Fiorino may well be found by a jury to constitute part of the proof required for a Sherman Antitrust Act conviction.

But although petitioner extends the joint liability theory to a theory of conspiracy in violation of the Sherman Act, proof of conspiracy is not necessary for civil proof of joint liability for arbitrary denial of due process and/or arbitrary grading of Fiorino's work.

In any event, the facts set forth in petitioners amended complaint and the absolutely identical photocopies of pages of the amended complaint which comprise the last 18 pages of petitioner's affidavit, certainly set forth enough material facts as to each of the 6 respondents' individual liabilities, to define genuine issues of arbitrary denial of due process, ethnic discrimination, breach of contract, and torts (see also pars. 8a(1-5) herein.

As in Poller v. CBS, Inc., et al, vide supra, it cannot be said in the present action that "there is no genuine issue as to any material fact," within the meaning of FRCP Rule 56c, and the motion for summary judgment against Fiorino should not have been granted.

If this Court looks at the record on summary judgment in the light most favorable to Fiorino the party opposing the motion, the motion should not have been granted.

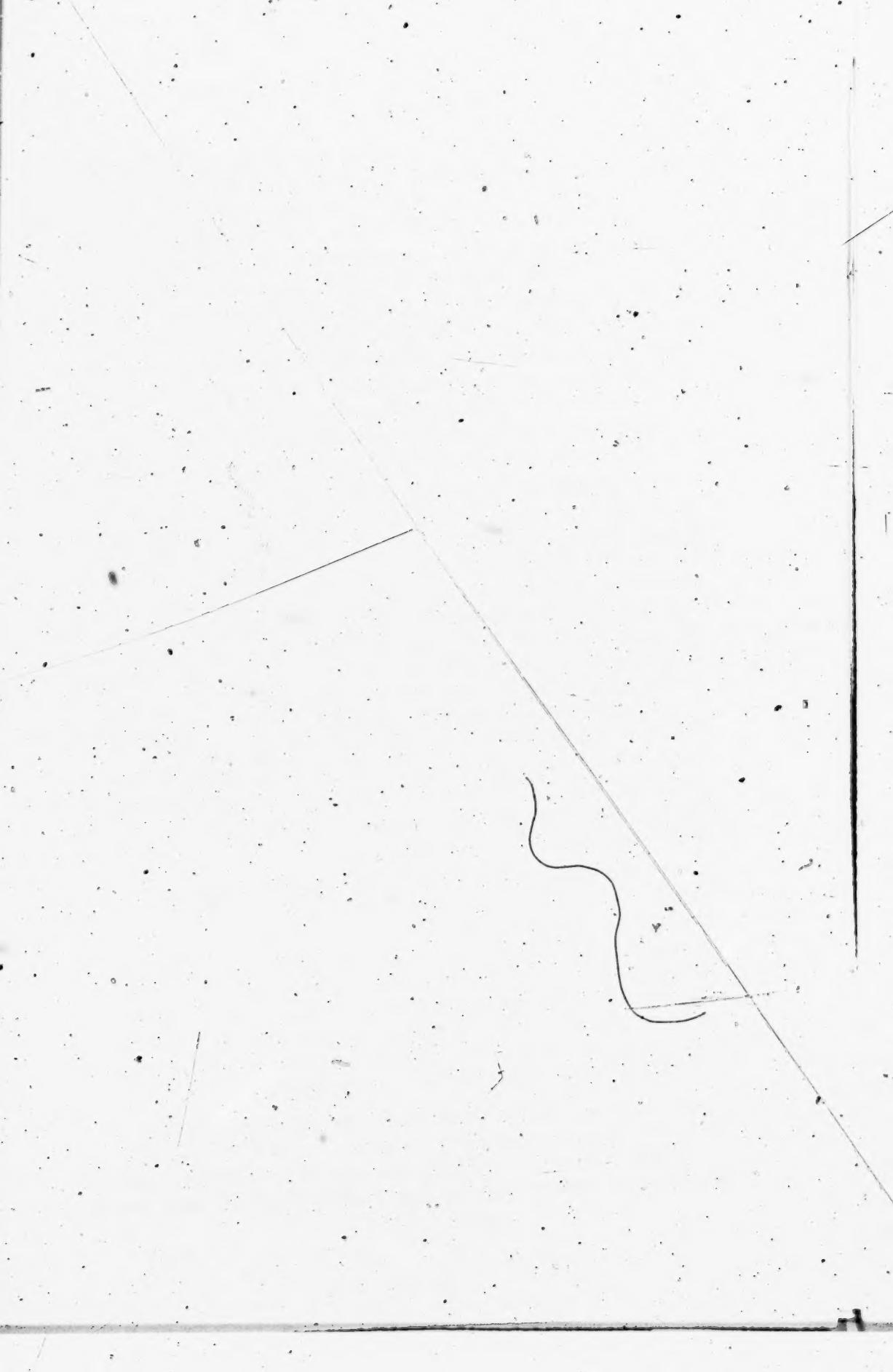
As in Poller v. CBS, vide supra, summary procedure should not have been used in the present action. This is a complex case, where claims and material facts are set forth in all fullness required by the Federal Rules of Civil Procedure. The 7 pages of claims in petitioner's amended complaint are developed with a completeness of logic (evidently derived from petitioner's experience in writing patent claims for E.I. du Pont de Nemours & Co., Inc., Sperry Rand Corp-

oration, Raytheon Company, etc.) Certainly petitioner's amended complaint was on file one full day before entry of the summary judgment. The 18 pages of fact statements in the amended complaint were certainly adequate to withstand the FRCP Rule 56c motion for summary judgment, in view of respondents' admission of denial of due process, and respondents' total failure to deny any of the material facts and allegations in petitioner's amended complaint and petitioner's and Clayman's affidavits. The Court of Appeals decision plainly conflicts with this Court's decision in Poller v. CBS, Inc., et al.

The Court of Appeals decision also conflicts with Mr. Justice Black's dissenting opinion in First Nat'l Bank v. Cities Service, 391 US 299. As in this present action, the Cities Service case was a complex action. Cities Service "enjoyed the luxury of never having been compelled by the Court to answer the complaint." Respondents in the present action have been given and have taken opportunity to answer Fiorino's original 4 page complaint filed July 31 1970. But respondents have 'enjoyed the luxury of never having been compelled by the court to answer' Fiorino's amended complaint with its 18 pages of material facts and 7 pages of claims naming each respondent some 15 times each.

As in First Nat'l Bank v. Cities Service, "there is one thing still stranger and more fantastic about" the present action. The Court of Appeals refused to permit Fiorino to amend his complaint, refused to allow Fiorino's motions to permit Fiorino's untimely filed oppositions to respondents' three motions filed October 9 1970, and refused Fiorino's 4 motions to produce evidence in respondents' custodies.

There may have been reasons in First Nat'l Bank v. Cities Service for the majority opinion to find for Cities Service, in view of the fantastically drawn out 11 year duration of the summ-



ary procedure in that case, the change of position of Waldron towards Cities Service, and Waldron's failure to present any material facts directly substantiating his conspiracy claims, although it was never explained why the court in that case did not require an answer to Waldron's complaint.

The facts in the present case are quite different. Petitioner's primary case is one of the individual liabilities of the 6 respondents, and petitioner has presented material facts establishing genuine issues as to the liability of each respondent with respect to arbitrary denial of due process, ethnic discrimination, breach of contract, and torts. In fact, respondents have admitted denial of due processon p. 1 of respondents' memorandum in support of motion to dismiss. The reasoning of both the majority opinion and Mr. Justice Black's dissenting opinion in the First Nat'l Bank v. Cities Service case, as applied to the fully developed set of material facts shown in the record of the present action, clearly lead to the conclusion that this action should not be terminated by summary judgment.

Moreover, the Court of Appeals has never explained its action in affirming the District Court's denying Fiorino's 4 motions to produce evidence in the custody of respondents. Only this evidence can conclusively prove whether Fabiano is responsible for racial discrimination and anti-semitism, as suggested by the hearsay evidence in Clayman's affidavit,(see addendum J herein). Only this evidence can prove whether DeGiacomo has committed perjury or suppressed evidence, as Fiorino alleges in his motion to adjudge whether DeGiacomo is in contempt filed November 5 1970 (see docket, addendum A herein). Fiorino is entitled to have these 4 motions granted because Fabiano has never denied his assault against Fiorino, and this evidence of Fabiano's physically demonstrated hostility against Fiorino certainly defines a genuine

9. ARGUMENT (continued)
issue as to Fabiano's possible racial discrimination against Fiorino, which is corroborated by Clayman's hearsay evidence.

The Court of Appeals has not helped to clarify the case by condoning Fabiano's assault against Fiorino as a mere loss of temper, as the Court of Appeals has completely overlooked Clayman's affidavit which adduces damning direct evidence against Kozuch and hearsay evidence against Fabiano, both of which demand corroboration or disproof by trial cross-examination and production of evidence in respondents' custody.(See the Court of Appeals orders in addenda C and D).

The Court of Appeals overlooked the damning circumstantial evidence which at least points to an absolute and irreconcilable contradiction between Fiorino's and DeGiacomo's affidavit statements as to the present custody of Fiorino's Equity examination answer paper (see par. 8a(4) herein and Fiorino's memorandum in support of motion to adjudge whether DeGiacomo is in contempt of Court filed November 5 1970).

The unresolved fact questions of Fabiano's alleged racial discrimination and anti-semitism, DeGiacomo's alleged perjury and suppression of evidence, Taylor's and Kozuch's alleged arbitrary denial of due process, and the 3 teachers' (DeGiacomo's, Mazzone's, and Fabiano's) arbitrary and unfair grading of Fiorino's answer papers — all call urgently for trial and certainly do not warrant summary judgment within the meaning of Federal Rule of Civil Procedure 56c. The Court of Appeals decision in this case clearly conflicts with this Court's decisions in Poller v. CBS, Inc., vide supra, and First National Bank v. Cities Service Co., (both majority and Mr. Justice Black's dissenting opinions), vide supra.

The Court of Appeals decision also conflicts with this Court's decision in Sartor et al v. Arkansas Natural Gas Corp., 321 US 620, in which this Court's opinion observed that FRCP "Rule

56 authorizes summary judgment only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, that no genuine issue remains for trial, and that the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try." American Ins. Co. v. Gentile Bros. Co., 109 F.2d 732; Whitaker v. Coleman, 115 F.2d 305. Petitioner submits that in this case all questions of what the truth is must be considered unresolved in view of the fact that the District Court's denial of Fiorino's motion to amend his complaint, and the District Court's unlawful denial of all of Fiorino's 15 motions in less than the 10 day period required by the District Court's own rules, has contributed to respondents' total failure to file any pleadings whatsoever against Fiorino's and Clayman's affidavits, or against Fiorino's amended complaint from which Fiorino's affidavit is copied and which contains 18 pages of material facts and 7 pages of carefully drafted claims against all of the respondents. Clearly, the Court of Appeals decision conflicts with this Court's decision in Sartor et al v. Arkansas Natural Gas Corp., vide supra.

The Court of Appeals decision also conflicts with this Court's decision in Duncan v. Louisiana, US Repts, vol. 391, p.145-169 et seq., in which Mr. Justice Black quoted with approval the passage:
"The origin of the Due Process Clause is Chapter 39 of Magna Carta which declares that "No free man shall be taken, outlawed, banished, or in any way destroyed, nor will We proceed against him, except by the lawful judgment of his peers and by the law of the land."" Murray's Lessee v. Hoboken Land et al, 18 How. 272,276.

Clearly, the respondents' admitted denial of due process, if proven arbitrary, and the Court of Appeals affirming the District Court's summ-

ary judgment, in view of the material facts and genuine issues of record, must be considered as unlawful denial of due process not within the meaning of Federal Rule of Civil Procedure 56c. The entire history of the due process clause shows that summary judgment was not rightly used in the present action, and that this action should proceed to trial so that the genuine issues and material facts of this case may be tried before the parties' "peers and by the law of the land", pursuant to the constitutional V and XIV amendments, the Magna Carta, and Duncan v. Louisiana, vide supra.

e. THE COURT OF APPEALS HAS SO FAR DEPARTED FROM RIGHT JUDICIAL PRACTICE AS TO CALL FOR THIS COURT'S SUPERVISION.

For argument on this important matter, petitioner would only point to the plain facts set forth in par. 8d herein, with the statement that reading of the 2 Court of Appeals orders will immediately disclose the facts that the Court of Appeals made egregious errors of fact in erroneously stating that Fiorino did not contradict respondents' affidavits (see addenda C,D,H herein), and the Court of Appeals obviously improperly attempted to deduce conclusions from the facts, and thereby improperly left its proper province of review of matters of law, to infringe on the province of the trial jury.

f. THE COURT OF APPEALS SANCTION OF THE DISTRICT COURT'S ERRORS CALLS FOR THE SUPERVISION OF THIS COURT.

The Court of Appeals improper sanction of the District Court errors amount to denying Fiorino trial by jury on the well-defined issues of this case. The District Court's errors are obvious from an analysis of the docket (addendum A) and the facts stated in par. 8f herein.

9. ARGUMENT (continued)

g. THE COURT OF APPEALS SANCTION OF THE DISTRICT COURT'S DEPARTURES FROM RIGHT JUDICIAL PRACTICE CALLS FOR THIS COURT'S SUPERVISION.

The District Court's summary judgment runs counter to all of the cases cited in the Table of Cases herein, and is contrary to the constitutional due process clauses; as well the FRCP Rules 8a, 8d, 8f, 15a, 56c, and 60b. See par. 8g above.

10. CONCLUSION.

The present action should not be terminated by summary judgment, but should be remanded for trial of the limited fact issues whether any one or more of the 6 respondents arbitrarily denied Fiorino due process, or arbitrarily graded Fiorino's academic performance, for the reasons stated in arguments abcdefg herein.

Respectfully submitted by the petitioner,

Date: June 10 1971

Signed: _____

Cal. C. Fiorino
16 Overlook Drive
Bedford, Massachusetts 01730
Telephone 275-6688 (617)

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CIVIL DOCKET UNITED STATES DISTRICT COURT

JURY Jury Demand Date: Plf 7/31/70 CA70-992-W

TITLE OF CASE	ATTORNEYS
CAL. C. FIORINO V. NEW ENGLAND SCHOOL OF LAW, A. LEAVITT TAYLOR, JAMES DeGIACOMO, A. DAVID MAZZONE, SALVATORE FABIANO, (AND WALTER J. KOZUCH, JR.)	For plaintiff: Pro se 275-6688 16 Overlook Drive Bedford, Mass. 01730 For defendant(s): Murray H. Falk 15 Broad St., Boston, Mass. Moulton, Looney, Mazzone, Falk, and Markham

STATISTICAL RECORD	COSTS	DATE	NAME	REC	DISB
J.S. mailed 10/70 Basis of Action: Civil Rights $2402000.00		1970 7-31 8-3	From CCF To Treas	15.	15.

DATE 1970	PROCEEDINGS (NOTE: Three periods... indicates memorandum filed in support of named motion.)
Jul 31	Complaint filed.
Aug 4	Summons(es) issued.
Oct 9	Defendant(s') New England School of Law (et al) motion to dismiss, filed. c/s ...
9	Defendant A. Leavitt Taylor's motion to dismiss, filed. c/s...
9	Motion of defendants for summary judgment, filed. c/s...
13	Marshal's return of summons(es) with service on Sep 22, 1970, filed.
26	Plaintiff's opposition to motion for summary judgment,...filed. c/s
26	Plaintiff's opposition to N.E. School of Law (et al's) motion to dismiss..., filed. c/s
26	Plaintiff's opposition to deft LEAVITT TAYLOR'S motion to dismiss..., filed. c/s
26	Plaintiff's motion to amend the complaint, ...filed.
(26)	Amended complaint received for filing.
26	WYZANSKI, CH.J. Defendants' motion for summary judgment, Granted. (See p. A2) →

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CIVIL DOCKET (continued)

DATE 1970	PROCEEDINGS
(Oct 26)	Judgment for defendants with costs.
(Oct 26)	Defendant's Leavitt (Taylor's) motion to dismiss, allowed.
(Oct)27	WYZANSKI, CH.J. JUDGMENT ENTERED. "....Judgment for all of the named defendants; Complaint is dismissed, with costs to defendants, taxed at $."
(Oct 27)	Copy to Messrs Fiorino, Falk
(Oct 30)	Bill of costs, filed.
Nov 5	WYZANSKI, CH.J. Plaintiff's motion to permit motion to amend..., filed, denied.
(Nov 5)	Plaintiff's motion to permit opposition to defendant's(s') motion(s) to dismiss, filed and denied..(two filed and denied)
(Nov 5)	Plaintiff's motion to permit opposition to defendants motion for summary judgment,..filed and denied.
(Nov 5)	Plaintiff's motion for relief from summary judgment,...filed and denied.
(Nov 5)	Plaintiff's motion to adjudge whether defendant James DeGiacomo is in contempt of court...filed and denied.
(Nov 5)	Plaintiff's three (four) motions to produce evidence in custody of defendant(s) 1.Salvatore Fabiano, 2.New England School of Law, 3. A.David Mazzone, (and 4. James DeGiacomo)...filed and denied.
(Nov 5)	Motion for relief from taxation of costs, ... filed and denied.
(Nov)5	Costs taxed in the amount of $37.90 against plaintiff both parties being present.
Nov 9	WYZANSKI, CH.J. Plaintiff's motion for findings by the Court..., filed and DENIED.
(Nov 9)	Plaintiff's motion for New Trial,... filed and DENIED.
(Nov)10	Plaintiff's motion to review taxation of costs...filed. c/s
(Nov)10	Plaintiff's second motion for relief from summary judgment...filed.c/s
(Nov)13	WYZANSKI, CH.J. Motion to review taxation of costs, Denied.
(Nov 13)	Second motion for relief from summary judgment. Denied.
(Nov 13)	Notice to Messrs Fiorino, Falk

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CAL C FIORINO
v.
NEW ENGLAND SCHOOL OF LAW(New England Law School)
A LEAVITT TAYLOR
JAMES De GIACOMO
A DAVID MAZZONE
SALVATORE FABIANO

CIVIL ACTION
70-992-W

JUDGMENT
October 27, 1970

WYZANSKI, Chief Judge

The Court on October 26,1970 having granted the motion of defendant A Leavitt Taylor to dismiss the complaint against him for failure to state a claim upon which relief can be granted, and having further on the same date granted the motion for summary judgment filed by codefendants New England School of Law, James De Giacomo, A David Mazzone, and Salvatore Fabiano on the grounds that there is no genuine issue as to any material fact based upon the pleadings and affidavits on file, and that the defendants named therein are entitled to a judgment as a matter of law, it is ORDERED

Judgment for all of the named defendants, complaint is dismissed, with costs to defendants taxed at $

/s/ Wyzanski
Chief Judge

By the Court,
/s/ Frances R. Foley
Deputy Clerk

B

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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 7790

CAL.C. FIORINO, Plaintiff, Appellant,

v.

NEW ENGLAND SCHOOL OF LAW,ET AL
(New England Law School), Defendants,
Appellees

MEMORANDUM and ORDER, Entered March 24,1971

In his petition for rehearing plaintiff reiterates the factual allegations in his "Amended Complaint" which in his opinion support the inference that defendants have treated him maliciously and in bad faith. His arguments, however, are nothing more than an attempt to pile inference upon inference, leading to conclusions which in the final analysis remain speculative. For example, the fact that the school administration was actively seeking American Bar Association accreditation does not, in our opinion, warrant the inference that plaintiff was treated arbitrarily. Nor do we think it reasonable to infer bias from the statement of one of plaintiff's teachers that "You can tell a student is going to flunk when you read his examination"; nor malice from the fact that a second teacher may have lost his temper in class one day; nor bad faith from the statement of a third teacher that the problem with plaintiff's examination may be "more a matter of form than content." In short, plaintiff has failed to offer sufficient evidence in response to the categorical denials contained in defendants' affidavits to warrant a trial on the merits. First National Bank v. Cities Service Co., 391 U.S. 253, 288-89 (1968); Moran v. Bench, 353 F.2d 193 (1st Cir.1965), cert.denied, 384 U.S. 906 (1966).

The petition for rehearing filed March 17, 1971, is denied.

For the same reasons, the motion to vacate dated March 23, 1971, is also denied.

By the Court: /s/ Dana H. Gallup Clerk

(cc:Messrs. Fiorino and Falk.

C

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UNITED STATES COURT OF APPEALS FOR THE FIRST CIR.

No. 7790. CAL. C. FIORINO, Plaintiff, Appellant
v.
NEW ENGLAND SCHOOL OF LAW ET AL.,
Defendants, Appellees.

Before ALDRICH, Chief Judge,
McENTEE and COFFIN, Circuit Judges.

MEMORANDUM and ORDER Entered March 3, 1971

Plaintiff, who was dropped from defendant law school because he received failing marks in three courses, appeals from a summary judgment dismissing his action against the school and three of its teachers. The complaint against a fifth defendant was dismissed on the pleadings. Defendants' uncontradicted affidavits show that plaintiff's grades were such that under previously published school standards, dismissal was proper. Plaintiff would surmount this difficulty by broad references to legal principles, running all the way from anti-trust through contract, defamation and tort, to violation of various alleged civil and constitutional rights. However, in the matter of a factual showing, by means of the procedures outlined in F.R.Civ.P. 56, and of legal authorities supporting liability on such few facts as were made to appear, his case is conspicuously weak.

Such deficiency is not cured by calling the defendants names, or by unsupported hypothesizing of an ethnic discrimination—particularly where the alleged discriminators are of the same ethnic background as himself. The basic fact is that plaintiff did not receive adequate grades according to the corporate defendant's published standards. It is not the province of this court to re-grade his papers, or to change the standards. Plaintiff's limited factual showing does not, in our opinion, construing it most broadly in his favor, warrant the inferences he would suggest.

The judgment of the district court is affirmed. By the Court: /s/ Dana H. Gallup Clerk.
(cc: Mr. Fiorino and Mr. Falk.)

D

- copy -

9 March 1970

Mr. A. Leavitt Taylor, President of the
Corporation
New England School of Law
47 Mount Vernon Street
Boston, MA. 02108

Dear Mr. Leavitt:

Subject: Petition for Hearing for Appeal from Adverse Decision of Readmissions Committee

I respectfully request a reply to my letter of 27 May 1969, wherein I appealed from adverse decision of Readmissions Committee. I enclose copy of said letter of 27 May 1969.

I also respectfully request a hearing before the highest governing body of New England School of Law, the Corporation comprising A. Leavitt Taylor, John R. Jennings, Bradbury Gilbert, Joseph S. Ayoub, Charles E. Barry, Anne G. Chaffee, Hon. Anna E. Hirsch, Helen W.B. Robinson, Helen P. Ross, and Hon. Jerome P. Troy; so that I may present my appeal from adverse decision of Readmissions Committee, and present my case for readmission to New England School of Law, in accordance with established rules of procedure.

Your reply is respectfully requested, within a reasonable time, at your earliest convenience.

Very truly yours,

Cal. C. Fiorino
P.O. Box 128
Bedford, MA. 01730
Telephone (617)275-6688

NOTE 1 : This letter was mailed to Mr. Taylor by certified mail number # 728977.

NOTE 2

Copy of this letter was attached to petitioner's amended complaint as addendum "L".

(E)

- copy -

THE GAVEL - A Student Newsletter
Portia Law School, Student Bar Association
(September 1967)

Portia is a school moving ahead. The first of our many goals is American Bar Association accreditation. It is obvious that the trustees and the administration have been hard at work to that end. To a large extent, much of what has been accomplished is the result of the active participation of the alumni association in the very important business of planning a future for the school. But who are the alumni? They are graduates of Portia working together in the interests of the Portia students of the future. However, the students are not only the beneficiaries of what will be done, but they are also the instrumentality by which others, including the A.B.A., will assess the value of what has been done.

DEAN'S MESSAGE (October 1967)

We are now in our sixth week of the new school year. Registration has been completed and all preliminary administrative work has been done. The student body has settled down to a year of study.

DEAN KOZUCH

This does not mean that the administration and faculty can now proceed normally, concerned only with their regular activities. In order to put the school in the best position possible for the coming A.B.A. inspection in December, ...plans must be prepared and executed, and minor changes must be effected when necessary...if we are to maintain...the overall new image we are now beginning to enjoy...in view of what must be done in such a short time...

NOTE : These quotations were attached in the form of photocopies of complete pages from The Gavel, as addendum "X-1" and "X-2" to petitioner's amended complaint.

- copy -

December 13, 1968

Mr. James DeGiacomo, Esq.
1 Center Plaza
Boston, Massachusetts

Dear Mr. DeGiacomo:

A pleasure to meet with you recently.

Would be obliged should you kindly retain your class records abd student papers for academic year September 1967 to June 1968 pending proceedings before the school board, or further proceedings.

Your cooperation is appreciated.

Very truly yours,

Cal. Fiorino (L-1048)
Box 128
Bedford, Massachusetts
(617) 275-6688

NOTE 1

This letter was mailed to Mr. DeGiacomo by certified mail number # 186 127 on Wednesday, December 18, 1968.

NOTE 2

Copy of this letter was attached to petitioner's amended complaint as addendum "W-1".

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS
Civil Action 70-992-W

Cal. C. Fiorino, Plaintiff v.
New England School of Law, et al, Defendants

(FIRST) AFFIDAVIT OF CAL. C. FIORINO

I, Cal. C. Fiorino...state that the facts set forth...on pages 2 through 18 of the Amended Complaint served on...23 October 1970, are the truth ...

I fully and positively contradict the Affidavits of Defendants James DeGiacomo, A. David Mazzone, and Walter Kozuch, Jr., incorporated in Defendants' motion for summary judgment, as follows:

1. Defendant Kozuch's Affidavit statements 5,7,9, and 10 are contrary to fact.

2. Defendant DeGiacomo's Affidavit statements 2 through 11 are contrary to fact, and, in particular, Defendant DeGiacomo's statements 7 and 8 are contradicted by sections 7, 7B, and 8 of Plaintiff's Amended Complaint...

3. Defendant Mazzone's Affidavit statements 2,3, 5 through 11, 13, and 14 are contrary to fact.

/s/ Signed: Cal. C. Fiorino

Sworn and subscribed to before me, this day, 4 November 1970,

/s/ Dorothea Black

Notary Public

(H)

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS Civil Action 70-992-W

Cal. C. Fiorino, Plaintiff v.
New England School of Law, et al, Defendants

AFFIDAVIT OF HENRY CLAYMAN)

I, Henry Clayman, having business address at 185 Broadway, Cambridge, Mass., state the following:

1. I attended New England School of Law, formerly named Portia Law School, 47 Mount Vernon Street, Boston, Mass. during the academic years 1966-1967 and 1967-1968, when I studied, among other courses, the Course in Commercial Law given by Professor Salvatore Fabiano, who assigned me a grade of 55 after I had completed said course in Commercial Law.

   I was dismissed from New England School of Law for alleged academic deficiency.

   I asked New England School of Law Dean Walter J. Kozuch, Jr. what I could do about my dismissal. Dean Kozuch said to me: "there is nothing you can do. Don't waste your time."

2. I was told by a student known to me only as "Pasquale", who wasattending New England School of Law at the same time as I, that Professor Salvatore Fabiano, by common reputation, was apparently accustomed to arbitrarily...at one time, fail predominantly Italian American students; and, at another time, Professor Fabiano would fail predominantly Hebrew American students.

Date: 4 November 1970

/s/ Signed: _____
Henry Clayman

/s/ Witness: _____
Steve Claymnn, 185 Broadway, Cambridge, Mass.

/s/ Witness _____
Cal. C. Fiorino, Box 128, Bedford, Mass. 01730

(J)